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A TRIBUTE TO WARREN E. BURGER†

The Honorable J. Michael Luttig††

If ever there was a life to be celebrated, then his.

He looked like the Chief Justice of the United States. But any who think this his foremost qualification, misunderstand the office he occupied and misunderstand the man that he was.

In a society often preoccupied with politics and convinced by sound bites, not even the nature of law itself is easily understood, much less that which defines greatness in those who hold our highest judicial office.

But history will record, as it already has begun to do, that Warren Burger was one of our great Chief Justices. It will reflect that he was exactly what the nation wanted and needed from the one in whom it reposed this ultimate trust.

Those of us who had the privilege to serve this extraordinary man as his law clerks were well aware that we were in the service of one who rightfully held this highest of offices. Albeit from a different vantage point, we saw in him the same that his colleagues on the Court and others in private life saw.

We saw a man whose oath was virtually his faith, a man who committed his entire life to the law. We saw a man who took his duties to heart, working literally eighteen to twenty hours a day, seven days a week, year after year, in their performance.

We saw a man singularly devoted to the Constitution—his life's passion. We knew it was high allegory that this man literally handed the Constitution to hundreds of thousands of Americans during the several-year celebration of its bicentennial, just as it was fitting that he shared his birthday with that document.

We saw in this man a boundless respect—indeed, a love—for the Supreme Court. And we saw a man whose every action was calculated to bring to it respect and who jealously protected that institution with every ounce of his considerable energy. We saw

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a man who, in an almost uncanny way, seemed guided by history, a man with enormous admiration for the Founding Fathers, who spoke of them in such a way that you believed that, somehow, some way, he really did know each and every one of them.

Perhaps most importantly, we saw a man who believed with all his heart that his high office belonged not to him, but to the people, and that he but held it in sacred trust. We saw a man who, because of this belief, in reality was quite humbled by his great office.

In him, we saw a man of judgment, one who had that rare gift that lies at the core of what was his life's undertaking, and for which the highest intelligence quotient is no substitute. A man who understood the difference between intellectualism for intellectualism's sake, on the one hand, and wisdom, on the other.

We saw a man of uncommon common sense—an intensely practical man, who took pride in his practicality. One who demanded of himself opinions that could be read and understood by the people. One who never hesitated to ask, when it made no sense at all, "Can this really be the law?"

We saw a man with a fierce sense of justice, a man who, one summer night in London, would not be restrained from entering and breaking up a street brawl when he saw five young thugs beating a lone other with fists and sticks. The Chief Justice. "It just wasn't right," he said.

In him, we saw a man who eschewed labels and defied categorization. There was no mistaking that Warren Burger was independent, that he was his own man, in everything he did.

There was never a doubt as to where the Chief Justice stood on an issue, from the need to turn off the lights during the energy crisis (of which we were reminded by hand-scrawled orders taped to the switch-plates), to the loftiest constitutional issue.

And, in keeping, we saw a man who simply declined to mold his own image through the avenues of media.

We, too, saw a "visionary." A traditional, conventional man, but a man who, from his professional days in Saint Paul, was never comfortable doing it "that way" just because "it had always been done" "that way." A man who, although inspired by history, was never fearful of challenging even the tried and tested, which he frequently did with that familiar twinkle in his

eye. He was challenged, and he challenged others, to do better, in the administration of the courts, in prison reform, in effective judicial decisionmaking. There was nothing as to which he refused to take a "fresh look."

He was a man who saw it as his solemn obligation to tout the virtues of the American system of law, here and abroad which, because he was convinced of those virtues, was easy to do. If told that he never turned down a request to discuss his favorite subjects—American law and the Constitution—I would believe. There was never a discussion, never a speech, when our reforms, our progress, our achievements were not hailed by him and held up as exemplary.

Throughout our years with him, we saw a man of deep conviction, and the certain strength that almost always attends such conviction. A man who had the courage and the character to stand up for what he believed was right. A man who, as all here would attest, never failed to speak his mind for fear of criticism.

In this unmistakable strength, this strength of character, we saw, and we sensed, a steadiness and a balance that reassured us, as it did the country, that our faith in the institutions of government, and particularly the judiciary, was fully justified. And all the while we understood that under his leadership, the course of law, and thereby the course of history, was undergoing a slow, but assuredly fundamental change.

We also had the opportunity to see "the Chief" just as a person, without the mantle of office. (Chief Justices, we forget, are people, too.) We saw what those who knew him only as a public figure never saw. And in many ways, this was the most special aspect of our service.

We saw a man who was easily understood—but only if one cared to understand.

We saw not at all a private man in the sense that was thought, but rather a man who always loved to be with and around people—visitors in the halls of the Court, acquaintances from the Washington establishment, and old friends—a man who simply treasured the very, very few hours a week that he did allow himself and his family.

We saw a man who was supremely conscious of the magnitude of the responsibilities he had assumed, and the little time that there was to fulfill them in the way he had decided they

must be fulfilled, but a man who ultimately was very much at ease with himself and his office.

We saw a man who, though comfortable with formality, much preferred informality. A man whose austere lifestyle never fell prey to official Washington. A man who, though he spent a lifetime in this capital city, in important respects never left the quaintness of his earliest Minnesota home.

We saw evident in everything he did, those wonderful, enduring midwestern values. A man with a profound sense of right and wrong, he was. In a time when it seemed that all had become relative, it simply was never so for him.

We saw a man whose respite was in tending to what seemed like the tiniest details of internal court management—details he took the time to address so that the public could better understand the Supreme Court and its role in our democracy.

We saw the man who, for hours, could recount story after story from history in such vivid detail that you would swear you were there.

We saw this man of commanding presence, who, for reasons we are only now beginning to understand, seemed never to hold a child or to speak of an old friend without tears coming to his eyes.

We also saw, up close, the quiet but sure love he had for Vera, who was his strength, and we saw the equally intense fatherly love that he had for Wade and Margaret.

We saw the fiery patriotism of a man who loved his country as much as anyone could.

We saw the wine connoisseur, the chef (whose bean soup and orange marmalade were nationally known—at least among his law clerks), the artist, the sculptor, the naturalist (who delighted that the same birds that nested in his holly tree on Rochester Street found their way to his new home on Wakefield), the antique buff, the humorist, and the political observer.

We saw much more that, because of his office, was regrettably hard for others to see.

And as we watched, we caught his contagious enthusiasm for life.

In a word, if only briefly, we who had the privilege of serving the Chief Justice were able to see the law—and life—through the eyes of an elegant, graceful patriot. And what an inspirational perspective it was!

He has now passed this life. But is there any doubt that he lives on through the institutions he shaped and so very much cherished, and through the countless lives he touched. A richer legacy than his none of us could hope for.

If ever there was a life to be celebrated, then his.

